IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA, A.D.2014

CORAM: ADINYIRA(MRS) JSC (PRESIDING)
OWUSU JSC (MS)
DOTSE JSC
ANIN-YEBOAH JSC
AKAMBA JSC

CRIMINAL APPEAL
No: J3/10/2013

28TH MAY 2014

ISAAC AMANIAMPONG @ FIIFI **APPELLANT**

VRS.

THE REPUBLIC **RESPONDENT**

JUDGMENT

OWUSU (MS) JSC.

The Appellant was charged together with two others on two counts of conspiracy to commit robbery and robbery contrary to sections

23 (1) and 149 and of the criminal and other offences Act, 1960, Act 29 as amended by Act 646 of 2003.

They were arraigned before the High Court, Sekondi for trial. They pleaded not guilty. The prosecution therefore led evidence in their quest to prove the charges against them.

At the end of the trial all three of them were found guilty on both counts and convicted. The 1st accused was sentenced to life imprisonment. The 2nd and 3rd accused persons were sentenced to 70 years each on both counts.

Dissatisfied with both conviction and sentence, the Appellant appealed to the Court of Appeal which dismissed the appeal against conviction but allowed the appeal against sentence and reduced the sentence of 70 years I. H. L. to 30 years I. H. L. Still dissatisfied, he has appealed to this court on the grounds:

> "(i) **that the Court of Appeal did not adequately consider the**
>
> **appeal against conviction**."
>
> "(ii) **that the sentence was harsh and excessive**."

Arguing ground (i), counsel referred the court to the charge sheet containing the two counts which reads thus:

> "COUNT ONE
>
> STATEMENT OF OFFENCE

Conspiracy to commit a crime to wit Robbery contrary to sections 23 (1) and 149 of the criminal code, 1960 (Act 29)

PARTICULARS OF OFFENCE

Godfred Aggrey alias Ekow, Salim Amin and Isaac Amaniampong alias Fifi on or about the 11th day of October, 2006 in Takoradi did agree and act together with a common purpose to commit crime to wit robbery.

COUNT TWO

STATEMENT OF OFFENCE

Robbery contrary to section 149 of the criminal Code, 1960 [ACT 29] as amended by Act 646.

PARTICULARS OF OFFENCE

God Aggrey alias Ekow, Salim, Amin and Isaac Amaniampong alias Fiifi, on the 11th October, 2006, in Takoradi at about 3:00am and for the purpose of stealing from Sharon Owusu Antwi her hand bag containing eight hundred and seventy-five thousand cedis [¢875,000] a Nokia Mobile phone, student I. D. Card and voter I. D. Card and with the intent to overcome the resistance of the said Sharon Owusu Antwi did cause harm to her and stole the bag and its contents."

In proving the charges against the accused persons before the trial court, the prosecution called four (4) witnesses but for purposes of the appeal, I will refer to the evidence of p. w. 1, Sharon Owusu

Antwi, the victim who only gave an eye witness account of what happened that morning of 11th October 2006. Her evidence is as follows:

"Q. On the 11th October, 2006, what happened to you?

A. I was on my way to Accra when I was attacked by 4 boys from

behind. The incident happened behind the Shaba place.

xxxxxxxxxx

A. I saw them when I headed towards Melcom. They were at the other side of the road. When I got to Melcom, I branched to the right heading towards the Accra station. In the middle of the road, I saw these same four boys hurriedly walking after me. I thought they were on their own. I saw one of them closely, approaching me. He was in a black 'T' shirt. I held my bag in my armpit. He reached up over me and tried to pull the bag from behind. In the course of taking the bag, I was pushed unto the cement block down. He took the bag and ran away. It was when I go up that I found that my palm had been slashed. I was bleeding from my palm- - - - - -"

Earlier on, the witness has told the court that she did not know the accused persons and has not seen them before.

Her evidence continued that the next day, she was informed that the police were looking for her. She followed up to the police station

where she got to know that some boys had been arrested and her I. D. cards found on one of them.

According to her, her bag contained a camera mobile phone, ¢875,000.00, a book and ID students' and voter cards.

Arguing the appeal, counsel contends that the evidence of p. w. 1 does not link the Appellant in any way to the commission of the offence of robbery. Indeed, under cross-examination she told the court she did not know the Appellant.

Counsel referred to the evidence of p. w.s 2 and 3, the manager of the bus which the accused persons boarded to travel to Accra and the driver of the bus respectively and again submitted that their testimony did not link the Appellant in the commission of the offence of conspiracy.

Following from this, counsel is also calling upon the court to set aside the conviction on the charge of robbery since no evidence was led to connect the Appellant to that charge.

In reply, the learned chief state Attorney referred to the definition of conspiracy as stated in section 23 (1) of the criminal offences Act of 1960, Act 29 as follows:

> "Where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence."

Counsel submitted that case law on conspiracy has always been that proof of prior agreement by direct evidence is nearly impossible and that such an agreement is inferred from proven facts.

In this wise the court is referred to the case of C. O. P. VRS AFARI and ADDO [1962]1 GLR 483.

Reference is also made to the cases of AZAMATSI and others VRS. THE REPUBLIC [1974]1 GLR 228 and STATE VRS BOAHENE [1963] 2 GLR 554.

Counsel further submitted that in a conspiracy, where there is evidence of overts acts, each conspirator acts as an agent of the others in the execution of their common criminal objective. He continued that the Court of Appeal dismissed the Appellant's appeal against conviction on both counts and concluded that the Appellant was a conspirator in the commission of the offence of robbery.

He contended that the Appellant had a sharp cutlass on him when he was searched at the police station. And that it was this cutlass that was used to slash the palm of the victim.

Turning to the second count of Robbery, counsel referred to section 150 of the criminal offences Act of 1960 which states that:

> "A person who steals a thin commits robbery.
>
> (a) if, in and for the purpose of stealing the thing, that person uses force or causes harm to any other person; or

(b) if that person uses a threat or criminal assault or harm to any person, with intent to prevent or overcome the resistance of the other person to the stealing of the thing."

He referred to the evidence of p.w.1 Sharon that her palm was slashed and her bag was pulled from behind and she was pushed down and submits this is enough to constitute robbery. The case of BEHOME VRS THE REPUBLIC [1979]1 GLR 112 refers.

In the circumstances, counsel submitted that the Appellant, so far as the offence of robbery was committed, was a party to the crime. In support of this proposition, counsel cited the case of R. V. CROFT [1944] KB 295.

From the record of appeal, there is no direct evidence linking the Appellant to the commission of the offence of robbery. However, the Appellant was charged with conspiracy with the others.

What is the position of the law on conspiracy?

The offence of conspiracy is committed "where two or more persons agree to act in committing or abetting a criminal offence whether with or without a previous concert or deliberation- - - - - - - - -"

The agreement to commit a crime is not always proved by direct evidence. It may be established by inferences from proven facts.

The evidence of p.w.1, the victim is that on that morning while she was heading towards Melcom, she saw four boys who were on the

other side of the road. When she got to Melcom, she branched to the right heading towards the Accra station. In the middle of the road, she saw these same four boys hurriedly walking after her. One of them closely approached her and she held her bag in her armpit.

He closed in and tried to pull the bag from behind. She was pushed down and the bag was taken away and the boy ran away.

About 1:00pm the same day, four boys bought ticket and boarded a bus to travel to Accra. Their way of dressing and bahaviour raised suspicion for which reason the driver of the bus was instructed to drive the bus straight to the Central Police Station.

At the police station, the boys were arrested and a search conducted on them revealed a locally manufactured pistol, one Nokia mobile phone on 2nd accused and another one on the 1st accused, a brand new sharp cutlass was found hidden in the trousers of the Appellant. Some razor blades were also found on them. Two I. D. Cards of p.w.1 were found in a purse which were tendered at the trial as Ex "D".

Among these boys was the Appellant. They were arrested and in the course of investigations, each of them volunteered statements to the police which were tendered in evidence at the trial.

In the statement of the Appellant, he said he had traveled from Accra to Takoradi with the two other accused persons on the invitation of the 1st accused on 9/10/06 and arrived in Takoradi

about 3:00am on 10/10/06 and lodged with him (1st accused). On 11/10/06 1st accused led them to Accra Station area at about 3:00am where he attacked p.w.1 and took away her hand bag.

According to his statement, 1st accused ran away after snatching the bag but he saw him again about 7:00am when 1st accused told them the bag contained a mobile phone and ¢75,000.00. 1st accused went to town and came back later to tell them he had sold the phone and the amount of ¢300,000.00 was going to be used for their transport back to Accra.

From these facts, even though there is no direct evidence connecting the Appellant to the commission of the robbery, can reasonable inferences be drawn to connect him to the commission of the offence? At least the contents of the bag containing the properties of p.w.1 which was found on the Appellant and his gang of four (one of whom managed to escape arrest at the police station) is enough to connect the Appellant to the commission of the offence. At about 3:00am on that 11th day of October, what was he and the three others out in the street for?

Why did they carry on them those offensive weapons i.e. the locally manufactured pistol and the sharp cutlass?

On the identity of the Appellant I am satisfied that there is enough circumstantial evidence to establish that the four boys including the Appellant were out at that time of the day with a common purpose to commit crime which they achieved by robbing p. w. 1 of

her bag and its contents. I am very mindful of the direction of Devlin J. (as he then was) in R. VRS ATTER, (The Times, 22 March 1956) that:

> "Where one has a case where the evidence is purely circumstantial, then I must satisfy myself, in my Judgment, that there is some piece of evidence that is more than mere suspicion, that there is some piece of evidence which would justify in saying that points to the accused. - - - - - - - - - - - - - - - - - -"

If the evidence is enough to establish the conspiracy charge against the Appellant, then it is immaterial that he did not actually rob p.w. 1 of her hand bag. Once the robbery was committed in furtherance of the object of the conspiracy, he is equally as guilty as the person who actually snatched the bag in the course of which, the victim's palm was slashed. His responsibility as conspirator was complete the moment he agreed with the others to go out at that time of the day to do what was eventually done. See the cases of STATE VRS. OTCHERE and Others [1963] 2 GLR 463 at 467 and STATE VRS YAO BOAHENE [1963] 2 GLR at 556.

The Appellant therefore is equally guilty of the offence of robbery. The Court of Appeal had dismissed his appeal against conviction on both counts but admittedly assigned no reasons for so doing. Technically therefore, the 1st ground of appeal succeeds but from the record, there is sufficient evidence to support the convictions.

Failure to assign reasons has therefore not occasioned any miscarriage of Justice as this court upholds the convictions.

The Appellant's second ground of Appeal is against 30 years I. H. L imposed on him by the Court of Appeal which has allowed his appeal against sentence and thus reduced the 70 years I. H. L. imposed by the trial court.

Counsel argues that inspite of the reduction from 70 years to 30 years, same is harsh and excessive.

The Court of Appeal reduced the sentence taking into consideration the age of the Appellant. This is what their Lordships said:

> "By the unanimous decision of this court, the appeal against the conviction is refused and dismissed. However, in view of the age of the Appellant at the time of offence (sic) was convicted (sic) which was 20 years, the appeal against sentence will be sustained.
>
> Accordingly the Appellant Isaac Amaniampong who stands convicted for conspiracy to commit crime to wit robbery and robbery all contrary to the criminal and other (sic) offences Act as amended shall be sentenced to a prison term of 30 years. The 70 years prison sentence imposed by the trial court is here by set aside and same replaced with the term of 30 years in view of the age of the appellant at the time the offence was committed as explained above. - - - - - - - - - - - - - - - - - "

The age of the Appellant was given as 20 from his statement to the police and this is why the Court of Appeal reduced the sentence imposed by the trial court to less than half (½).

He, according to his statement was a driver's mate and was resident in Accra. What did he go to Takoradi to do?

He had hidden in his trousers a sharp cutlass when he boarded the bus to travel to Accra.

From their statements to the police, the accused persons were all young adults between the ages of 18 and 22 years. Is the commission of crime of the nature of robbery the best use they can put their youthful ages?

Before the trial court, "the accused persons appeared unrepentant and have shown no remorse," His Lordship remarked.

Robbery is a felony and where harm is caused, as in this case the minimum sentence imposed by law is 15 years I. H. L.

Punishment is justifiable as a deterrent not only to the criminal himself, but also, and even more importantly, to those who may have similar criminal propensity. A way must be found to protect society from the activities of these criminals and to me, this way is confinement for a considerable length of time. The Appellant if he is mindful of reforming must do so whiles in prison.

I therefore under the circumstances do not consider the 30 years I. H. L imposed on the Appellant by the Court of Appeal harsh and excessive.

The appeal against sentence is accordingly dismissed.

(SGD) R. C. OWUSU (MS)

JUSTICE OF THE SUPREME COURT

ADINYIRA (MRS) JSC: (PRSIDING)

I have read the opinion of my worthy sister Owusu JSC and I agree with her conclusion that the appeal against conviction and sentence be dismissed.

(SGD) S. O. A. ADINYIRA (MRS)

JUSTICE OF THE SUPREME COURT

ANIN YEBOAH JSC:

I also agree that the appeal against conviction and sentence be dismissed.

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

DISSENTING OPINIONS ON SENTENCE

DOTSE JSC:

I have somehow been influenced and motivated by an incident that happened on 14th May 2014 at the Korle bu Teaching Hospital Medical Block to write this opinion. Whilst waiting to visit a patient, a lawyer who happened to know me disclosed my identity as a Judge, and the following discourse ensued between me and a gentleman who was also waiting to visit a patient or be attended to.

> *"What is wrong with you people? What at all is wrong with you Judges in Ghana. What criteria do you use in sentencing people? Someone steals a mobile phone and he is imprisoned 50 years, another steals millions of Ghana cedis and he is left off the hook. Ghanaians are watching."*

I could only sympathise with the gentleman and expressed the fact that I share in his frustrations and that I believe there are many Judges who also feel embarrassed by the media reports about some of these ridiculous sentences. I also advised him that, because Judges all over the world have wide discretion whenever it comes to sentencing, it is difficult to control their exercise of discretion.
I was however quick to assure him that steps had been taken by the Judiciary to come out with Guidelines that will assist Judges in sentencing persons convicted of crimes before the law courts.

How then did this interaction with the gentleman affect my opinion in this case? Just read on.

FACTS OF THE CASE

The appellant herein and two others were arraigned before the High Court, Sekondi on two counts of conspiracy to commit robbery and robbery. The statement of offence and particulars of the offences with which they were charged reads as follows:-

Count One

Statement of Offence

Conspiracy to commit a crime to wit Robbery contrary to sections 23 (1) and 149 of the Criminal Code, 1960 (Act 29)

Particulars of Offence

Godfred Aggrey alias Ekow, Salim Amin and Isaac Amaniampong alias Fifi on or about the 11 day of October, 2006 in Takoradi did agree and act together with a common purpose to commit crime to wit robbery.

Count Two

Statement of Offence

Robbery contrary to section 149 of the Criminal Code, 1960 (Act 29) as amended by Act 554.

Particulars of Offence

Godfred Aggrey alias Ekow, Salim Amin and Isaac Amaniampong alias Fifi on the 11th October 2006 in Takoradi at about 3.00 am and for the purpose of stealing from Sharon Owusu Antwi ***her hand bag containing eight hundred and seventy-five thousand cedis (¢875,000.00), a Nokia Mobile Phone, student ID card and Voter ID and with the intent to overcome the resistance of the said Sharon Owusu Anti did cause harm to her and stole the bag and its contents.***

In this case, the appellant and the two others with whom he was arraigned before court, and another at large, attacked one Sharon Owusu Antwi, a student then at the Takoradi Polytechnic at about 3.00am on 11th October 2006. They inflicted injuries on her palm, pulled her to the ground and snatched her lady's handbag which contained her student's I.D. card, **mobile phone** and money to the value of ¢875,000.00 now **GH¢875.00.**

However, through the vigilance of other passengers at the City Express Terminal in Takoradi and the boldness and courage of the officials of the Transport Terminal, the three persons who were arraigned before court were arrested at the Takoradi Police station as the driver was instructed to drive there due to the suspicious conduct of the appellant and his gang of robbers. However, one of the members of the gang escaped but the appellant and his two other friends were not so lucky.

During search on the appellant, and the other two, certain incriminating items to wit, **one locally manufactured pistol**, **a cutlass**, **a lady's handbag** containing **two I.D. cards and three razor blades**. **The cutlass for example was found hidden in the dress of the appellant herein.**

From the facts of the case, it is apparent that the appellant and his group were a gang of criminals who had invaded the twin city of Sekondi-Takoradi with the sole aim of robbing their victims. This can be explained by their accoutrements, the pistol, cutlass, and razor blades.

After trial, during which the prosecution called four witnesses, which included the victim, the transport officials at the City Express and the Police Investigator, the appellant and the other persons also opened their defence.

After evaluating the evidence against the appellant and his criminal gang the learned trial Judge summed up the evidence and the law before he passed sentence on all the accused persons including the appellant in the following terms.

> *Robbery is where:-*
>
> *"A person steals a thing and for the purpose of stealing the thing, he uses any force or causes any harm to any person or if he uses any threat or criminal assault or harm to any person, with intent thereby to prevent or overcome the resistance of the stealing of the thing."*
> *I accept the evidence of the Prosecution witnesses. The witnesses appeared serious and honest to me and the evidence put forward dovetail so well that it formed a formidable case of conspiracy as charged and robbery.*
> *I regret the explanations given by the accused persons. Their evidence did not only contradict their statements on record,* ***they also cast themselves out as persons with a double tongue.***
> ***They are persons devoted to crime and would lie about anything without blinking an eye. I find them to be tough rebels without anything to loose.***
> ***I find all three accused persons guilty of both charges of conspiracy to rob and robbery and convict each of them on the two (2) counts accordingly.***
>
> ***The accused persons appear unrepentant and have shown no remorse.***

1st accused

You are the team leader. You recruited the two other accused persons. You supplied them with the weapons. You caused the operation to be undertaken. You have another case pending in the Circuit Court.
I sentence you to life imprisonment.

2nd accused

I sentence you to 70 years in jail.

3rd accused

I sentence you to 70 years in jail

From the above, the appellant just like his colleague the second accused were all sentenced to 70 years imprisonment.

The appellant herein appealed to the Court of Appeal sitting at Cape Coast against both conviction and sentence. The Court of Appeal in a unanimous decision dismissed the appeal against conviction but allowed the appeal against sentence in the following terms:-

"***However in view of the age of the appellant at the time of offence was convicted (sic) which was 20 years, the appeal against sentence will be sustained.***
Accordingly, the Appellant Isaac Amaniampong who stands convicted for complicacy (sic) to commit crime to wit Robbery and Robbery all contrary to criminal and other offences Act as amended shall be sentenced to a prison term of 30 years. The 70 years prison sentences imposed by the trial court is hereby set aside and ***same is replaced with the term of 30 years in view of the age of the appellant at the time the offence was committed as explained above.*** *The appeal against convict (sic) therefore fails and the appeal against sentence is sustained. The term of 30years will be for both convicts and to run concurrently."*

The above constitute in the main the reasons why the Court of Appeal substantially reduced the prison term of 70 years to 30 years. It must be noted

that the appellant was aged 20 years at the material time, **and was a first offender.**

Despite having benefited from the exercise of the discretion of the Court of Appeal in the huge hair cut in the sentence, the appellant nonetheless again appealed to this Court with the following as the grounds of appeal as well as reliefs sought from this court.

> "*GROUNDS OF APPEAL PURSUANT TO LEAVE GRANTED ON 19/3/2013*
> *Grounds of Appeal*
>
> *i. The Appellate Court did not adequately consider the appeal against conviction.*
>
> *ii. The new sentence of 30 years is too harsh.*
>
> *Reliefs being sought*
>
> *i. To set aside the conviction and or*
>
> *ii. Reduce the 30 years IHL."*

APPEAL AGAINST CONVICTION

I have read the appeal record together with the submissions of learned Counsel for the appellant Nkrabeah Effah Dartey and that of the learned Chief State Attorney, K. Asiama-Sampong. I have also critically considered the caution statement of the appellant and his co-accused and the law applicable. I am of the considered view that the appeal against conviction is only a wide goose chase and the appellant only embarked upon fishing in shallow waters with a flimsy hope that probably he might be successful. In any case, the appeal against conviction has not been well made out, and same cannot be sustained.

Unfortunately, his fishing net and the expertise in spreading the nets have not been able to catch any fish. I will therefore accordingly dismiss the appeal against conviction and same is hereby dismissed.

APPEAL AGAINST SENTENCE

Since I intend to be somehow detailed and lengthy in my analysis on the appeal against sentence, primarily because of my encounter at the Korle bu Teaching Hospital on the 14th May 2011, an event I have already alluded to, I will set out in some detail the submissions of learned counsel on this issue of sentence.

SUBMISSION OF LEARNED COUNSEL FOR APPELLANT ON ISSUE OF SENTENCE

> *"My lords, I am submitting purely for academic purposes only because honestly I think the conviction was an error, but in the unlikely event that you uphold the conviction which I urge you not to do then the sentence, even at 30 years is too harsh and excessive.*
> ***Which weapon was used? What was stolen? What harm was caused to the victim? Please do not kill an ant with a sledge hammer.***
> *The Court of Appeal looked at the age of the Appellant – 20 years – and for that reason substituted 30 years for 70 years – it is still too high. Even assuming for argument only that the conviction should stand, looking at all the circumstances, where lies the basis for sentencing him to 30 years in prison?*
> *Please look at page 37 lines 2 -4 where the trial judge said:*
> *"They are persons devoted to crime and would lie about anything without blinking an eye. I find them to be tough rebels without anything to hide."*
> *Where did my Lord get all these points from?*
> ***By contracts they are all first offenders, so where is the evidence that they are tough rebels?***
> *I pray most fervently that looking at his age and the circumstances of the case assuming you still want to uphold the conviction that you reduce the sentence to below 10 years IHL."*

SUBMISSIONS OF LEARNED COUNSEL FOR REPUBLIC/RESPONDENT ON ISSUE OF SENTENCE

On the other hand, learned Chief State Attorney Asiama Sampong in sharp contrast, submitted thus:

> "*It is our submission that the sentence should not be disturbed.* ***This is because 30 years IHl imposed on the appellant for an offence like robbery which the society abhors is not excessive.***
> *Counsel did not consider the following fivefold purpose of a sentence in his plea for reduction of sentence:* ***to be punitive calculated to deter***

others, to reform the offender, to appease the society and to be a safeguard to this country. *An offence which is of a very grave nature merits a severe punishment so. In a heinous crime like armed robbery the sentence must be punitive, deterrent or exemplary as stated in the case of* ***Adu Boahen (supra) and Kwashie v the Republic [1971] 1 GLR 488-496*** *where it was held that:*

"In determining the length of sentence, the factors which the trial judge is entitled to consider are: ***(1) the intrinsic seriousness of the offence (2) the degree of revulsion felt by law-abiding citizens of the society for the particular crime; (3) the premeditation with which the criminal plan was executed; (4) the prevalence of the crime within the particular locality where the offence took place; or in the country generally;(5) the sudden increase in the incidence of the particular crime;*** *and (6)* ***mitigating or aggravating circumstances such as extreme youth, good character and the violent manner in which the offence was committed."***

Respectfully, my Lords, it is our submission that the only ***way an appellate court can interfere with a sentence is where a wrong principle of evidence was applied in passing the sentence or the sentence is excessive****. In arriving at their decision with regard to the sentence, the court considered all the mitigating and aggravating circumstances there are. In the case of* ***Apaloo v The Republic [1975] 1 GLR 156****, it was held that:*

The principles upon which the court would act on an appeal against sentence were that it would not interfere with a sentence on the mere ground that if members of the court had been trying the appellant, they might have passed a somewhat different sentence. ***The court would interfere only when it was of opinion that the sentence was manifestly excessive having regard to the circumstances of the case, or that the sentence was wrong in principle."***

From the conclusions reached by the trial High Court and the Court of Appeal as narrated supra, it is apparent they took the following factors into consideration before passing sentence in the case of the High Court, and in the context of the Court of Appeal, before reducing the sentence on appeal.

HIGH COURT

i. That the prosecution witnesses impressed him.

ii. That the appellant and his criminal gang should not be believed.

iii. That the appellant and the other members of his gang are devoted to crime.

iv. Finally, that the appellant and the others have not shown any remorse.

Due to the said factors, the trial court was of the view that the appellant and his gang needed to be kept away from society for a long time. It is no wonder that the 1st accused in the trial was indeed sentenced to life imprisonment.

COURT OF APPEAL

It is apparent that the main consideration of the Court of Appeal in allowing the appeal against the sentence of the appellant was his youthful age, 20 years at all times material to the circumstances of this case.

By their written submissions, learned counsel for the appellant and the Republic/ Respondent also raised some pertinent legal principles that have guided the Courts on the imposition of sentence both at the trial and the appellate courts.

COUNSEL FOR APPELLANT

Learned Counsel for the appellant, invited this court to take the following factors into consideration in respect of the reduction of sentence:

i. The weapon used

ii. Value of item stolen

iii. Nature of harm caused to the victim

iv. Age of the appellant

v. That the appellant is a first offender

BY COUNSEL FOR REPUBLIC/RESPONDENT

Learned Counsel for the Republic/Respondent on his part raised the following issues:

i. That because society abhors the offence of robbery – It is prudent to confine the appellant for a long time.

ii. Submitted that the five fold nature of sentences when considered will not entitle the appellant to any reprieve.

These are:

a. Punitive nature of sentence

b Deterrence

c. Reformative

d. To appease society, in that society frowns upon this type of criminal conduct.

e. Protect the community by caging the appellant and his type for long periods.

Learned Counsel then relied on the celebrated case of **Kwashie v Republic** already referred to supra.

Learned Counsel also referred to the case of **Apaloo v Republic** also already referred to supra which established the fact that, an appellate court would only interfere with the sentence when it was of the opinion that the **sentence was manifestly excessive having regard to the circumstances of the case or that the sentence was wrong in principle.**

WHAT PRINCIPLES SHOULD GUIDE THIS COURT IN CONSIDERING AN APPEAL AGAINST A SENTENCE OF 30 YEARS IMPOSED IN A ROBBERY OFFENCE ON A 20 YEAR OLD AND A FIRST OFFENDER?

Unfortunately, as a country we have not improved our criminal justice regime since the Criminal and other Offences (Procedure) Act was passed in 1960. There have been several adhoc attempts through legislation to deal especially with menacing crimes like robbery, defilement and narcotics. In all these, it is certain

we have been behaving like fire fighters, this is because the State only reacts to the sentencing regime on particular offences as and when the exigencies of the moment demands.

This Court for example considered the various legislative regimes that have existed in offences of robbery in this country in the case of ***Frimpong alias Iboman v Republic [2012] I SCGLR 297***, at pages 329 – 331 as follows:-

> "*What is to be noted here is that, whilst the minimum sentence for robbery has been fixed at 10 years simpliciter, in cases where offensive weapons have been used, the legislature has deemed it fit and proper to enhance the minimum to 15 years imprisonment. Being a first degree felony means that the legislature has categorized the offence of robbery as a grave one. The maximum sentence can therefore be any number of years that a court deems suitable and appropriate under the circumstances unless the statute states otherwise.*
> *There is no doubt that robbery is a serious crime and various legislations in this country have sought to deal with it as best as they could.*
> *In the unreported criminal appeal case* ***of Daniel Ntow v The Republic****, Criminal Appeal No. CRA No. H2/25/05 dated 6th April, 2006 the Court of Appeal, Coram Owusu-Ansah JA presiding, Jones Dotse JA as he then was, and Iris May Brown J (Mrs) as she then was in a consideration of the legal regime and effect of the various amendments to section 149 of the Criminal Code, 1960 Act 29 observed as follows:-*
> ***"In an attempt to rationalise the seriousness which society attached to the menace of armed robbery, NRCD II"***
> ***(which is the suppression of Robbery Decree 1972, NRCD II)***
> ***went to the other extreme by limiting the courts to only two sentences upon conviction in a robbery charge, namely:-***
>
> ***1. Life Imprisonment and***
>
> ***2. Sentence of death***

This was the situation until Act 646 was enacted in 2003 which has indirectly amended and or repealed not only the original section 149 of Act 29 referred to supra, but also NRCD II as it is relevant and applicable to section 149".

> *Continuing further, the Court of Appeal observed in the* ***Daniel Ntow v Republi****c case referred to supra as follows:-*

"In effect, the result of the enactments in Act 646 are to do away with life imprisonment and sentence of death in all cases of robbery, even where violent means are used which results in death."

What this meant was that the mandatory death and or life sentences had been done away with. Continuing, the Court of Appeal stated thus:

The result has been the lengthy sentences that trial courts started to impose on convicted robbers. This has led to inconsistency in the sentences handed down by the courts. Whilst the minimum sentences have been fixed by operation of law, i.e. 10 or 15 years as the case might be, the sky appears to be the limit for the maximum. That is where the court in appropriate cases must consider the factors of punishment before sentences are imposed on convicted robbers."

From the above quotation, it is clear that, the courts have been granted a lot of discretion in the sentencing regime of convicted persons charged with robbery. This no doubt has accounted for the many varied, sometimes ridiculous sentences that the courts have been imposing of late in cases of robbery and stealing.

For example, in case *No. Acc.7/2012* intitutled ***The Republic v Nana Ama Agyeiwaa, Osei Kwame and Avo Kevorkion*** the High Court, Accra presided over by M.H. Logoh J, on the 9th May 2014 convicted and imposed the following sentences on 1st and 3rd accused persons who faced two counts of conspiracy and robbery for the 1st accused and robbery for the 3rd accused to 15 years each with sentences to run concurrent.

It is also instructive to note that the learned trial Judge indicated that because both accused are young persons and first offenders they must be dealt with leniently.

The judgment also indicated that the amounts stolen and which had been taken away by one of the accomplices, Osei Kwame who is on the run are:

i. **GH¢75,000.00**

ii. **$320,000 USD**

iii. €111,000 Euros

The offensive weapons used in the robbery attack were **a knife**, **a pistol** and **rope** with which they tied the hands and feet of the victim.

Comparing the value of the items stolen in the Spintex road robbery case, with those in this appeal, it would appear that the value of the items in this appeal are nothing really of value.

Secondly, whilst one of the accused persons in the Spintex road robbery case was an insider, i.e. a co-worker of the victim of the crime who turned coat, there is nothing of the sort here.

However, considering that the accused persons got away with 15 years sentences in the Spintex robbery as compared to 30 years for the appellant in this appeal, it is clear then that the appellant herein, ought to be differently treated, by having a reduced prison sentence.

SENTENCING GUIDELINES

The gentleman who accosted me at the Korle bu Teaching Hospital in the incident I had referred to supra apparently has some measure of justification for the comments he made. It is because of the lack of consistency in our sentencing regime that comments like that can legitimately be made. In a bid to stem the tide, the Judiciary in co-operation with the British High Commission has put together Sentencing Guidelines. The introduction to these guidelines which are yet to be operationalised states as follows:

> *"Sentencing is one of the most difficult parts of criminal law. It is important that everyone knows the principles a Judge or Magistrate uses when fixing a sentence.* ***Everyone means the victim, the accused, the witnesses, their families and friends, the police, the lawyers, the community, the press and the public at large****. There are many factors to be taken into account and balanced against each other. Different Judges and Magistrates may fix different sentences for the same offence and offender. Consistency is important. No two cases are exactly the same. It would be wrong if widely different sentences were passed for two cases which are generally the same. It is important that reasons are given for the sentence in every case. Everyone should know how a particular sentence is fixed. Sentencing also includes other orders such as compensation, restoration of property, and forfeiture of proceeds of crime".*

It is my hope that with the coming into force of these guidelines, seminars for all Judges and Magistrates especially in the trial courts, will be organized in order to keep them abreast with the contents and in a bid to operationalise the said guidelines.

The guidelines must be understood as being guidelines only and an attempt to serve as a directional guide for Judges and Magistrates to know the limits within which they can sentence say in a robbery case, taking into consideration the force and or nature of the violence, the value of the items stolen and the premeditation with which the offence was committed among other factors.

This it is expected will narrow the wide discretion that judges have to some extent. But these are not be considered as having replaced the Judges discretion altogether.

Various countries had been in the state in which Ghana now finds itself on the issue of inconsistent, disparaging and varied sentences on convicted persons.

In the US for example, they sought to deal with this phenomenon by the setting up of a Sentencing Commission which came out with what is now generally known as the Sentencing Guidelines.

However, the U.S. Supreme Court, had occasion to comment on the constitutionality of the Sentencing Commission and the Guidelines in the celebrated case of **Mistretta v United States**, reported in the Oxford Guide to United States Supreme Court Decisions, edited by Kermit L. Hall as follows:

> *"**Mistretta v United States,** 488 U.S 361 (1989), argued 5 October, 1988, decided 18 January 1989 by vote of 8 to 1; Blackmun for the Court, Scalia in dissent. **Federal judges have traditionally exercised considerable discretion in fixing the terms of sentences for convicted offenders.***
> ***Convinced of a need for more uniformity in sentencing practices, Congress passed the Sentencing Reform Act of 1984, creating the United States Sentencing Commission and giving it authority to establish ranges of sentences for all categories of federal offenses.***
> *The commission was established as an independent body within the judicial branch to consist of seven members appointed by the President*

and removable by him. At least three were required to be federal judges, selected by the President from a list of six judges recommended by the Judicial Conference of the United States.

This statutory challenge to judicial autonomy, plus the unusual provisions for appointment and removal of commission members, raised separation of powers issues.

However, in Mistretta ***the Supreme Court upheld the sentencing law in all respects.*** *Though admitting that the commission was "an usual hybrid in structure and authority," Justice Harry A. Blackmum ruled that locating the commission within the judicial branch did not violate the separation of powers doctrine (p.421). The commission was not a court nor controlled by the judiciary. Requiring three federal judges to serve on the commission along with non-judges did not affect the integrity or independence of the judicial branch. Giving the president power to remove commission members had no effect on the tenure or compensation of Article III judges. The development of sentencing rules was an "essentially neutral endeavour" in which judicial participation was "peculiarly appropriate" (p. 407).*

Justice Antonin Scalia, dissenting, challenged the constitutionality of the commission. He concluded that it was a violation of Article III of the Constitution to have federal judges serve in policy-making positions in the executive branch."

It is therefore my hope that lessons would be learnt from this U.S. example and experience so that courts in Ghana do not repeat the same mistakes. I am also very optimistic that support would be lent to this initiative from the Judiciary.

What then should be the clear indicators and or criteria that the Courts must use in exacting punishment on convicted persons, especially custodial sentences?

Luckily for me, Professor Mensa-Bonsu's Invaluable book, *Criminal Law, Series – "The General Part of Criminal Law Volume"* I has tackled and dealt with this phenomenon in such detail that it is impossible for me not to quote portions of it in extenso to support my decision.

On purpose/aims of punishment the learned Author wrote thus:

PURPOSE / AIMS OF PUNISHMENT

"It is appropriate at this point, to examine the question of the purpose of the institution of criminal punishment. Why do we have punishment at all? Why not something else altogether? Why do we punish people who commit offences? The question can be answered shortly by stating that there has not as yet been found any method of ensuring compliance with rules that have been handed down either within the family or within the state.

***The fact that punishment per se has its own intrinsic worth does not mean that it is imposed mindlessly, without a consideration of the ends it's imposition on offending individuals is intended to achieve**. The imposition of punishment therefore has various aims. The main aims for the imposition of punishment are generally acknowledged to be: (1) **retribution;** (2) **deterrence;** (3) **prevention**; (4) **reformation**; (5) **rehabilitation**; and (6) **justice**. These purposes are divisible along the two main lines of **retributive** and **utilitarian** theories.*

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THEORIES OF PUNISHMENT

RETRIBUTIVE THEORIES

Retribution

*There are two main theories of retribution. The first is grounded in revenge .i.e. that State should avenge the wrong done to the victim, by paying the offender back in his own coin. The adherents of this theory believe that an offender must be made to suffer to the same extent that the victim suffered. **The Mosaic law captures the idea in the maxim "A tooth for a tooth an eye for an eye".** This is a largely discredited view of the purpose of punishment for one might end up imposing punishment for the sake of punishment.*

*The second and more respectable view of retributive punishment is that the punishment must fit the crime. This view takes the position that an individual offender must get his just deserts. **In many ways most systems of criminal justice adhere to this view for there are different degrees of punishment for different degrees of criminal activity**. The very fact that different degrees of punishments are prescribed for offences with various degrees of gravity itself is an indication of a built-in system of retribution. **The effort to***

make the offence fit the crime also has the result of making the punishment reflect the communities values, e.g. murder is punished more severely than manslaughter, and robbery is in turn punished more severely than stealing; see sections 69 and 70 of Act 29. Section 69 provides that intentionally and unlawfully causing harm by the use of an offensive weapon is a first degree felony.

Clearly, from this manner of categorization, it can be appreciated that this community considers the resort to weapons in times of conflict between individuals as more grievous than the use of body parts such as hands**. Thus although the same degree of injury may be caused by the use of hands as by offensive weapons, the use of the latter offence is considered to be a more serous offence than the former. **All punishment is essentially retributive since it is invoked in response to the commission of a crime, and not merely because its imposition could prevent crime."

Prof. Mensa-Bonsu again on pages 130-131 sums the utilitarian theory of punishment as propounded by Jeremy Bentham which deals with deterrence as follows:-

"UTILITARIAN THEORIES

*The utilitarian theory as espoused by Jeremy Bentham is essentially to the effect **that laws must ensure the greatest good for the greatest number of people.** Thus whatever the law-making effort engaged in, it must produce useful results that would ensure that happiness of the greatest number. **For this reason, punishment must not be considered as an end in itself, but as a means to an end. It must serve a purpose, or it is an exercise in waste.***

When punishment succeeds in reducing crime because people realise that offenders would be punished, that is a useful end. Therefore the concept of deterrence is very prominent in the arsenal of utilitarians.

Deterrence

Adherents of this theory believe that punishment should serve a deterrent purpose so as to indicate to the community that conduct of the nature punished would not be tolerated in the society. Deterrence operates on two different levels: General deterrence and Specific deterrence.

i. General deterrence

This refers to the effect of the imposition of a particular punishment on the generality of people within a given society. ***Thus, when a convicted person is punished severely as an example to all and sundry, the hope is that the fear of the sanction would ensure that other like-minded people would be discouraged from pursuing any such activity.*** *The general public would be thus discouraged from undertaking any like acts. Deterrent sentences tend to be severe and may often be unfair to the particular individual, but utilitarians would argue that it is better for one individual to be sacrificed to preserve the happiness of the greater majority than that the individual should be protected, at the cost of failing to teach the rest of the community the necessary lessons."*

The various principles espoused by the learned and distinguished author have been applied by the Courts in a number of cases. See for example the cases of:

- ***Kwashie v Republic already referred to***
- ***Adu-Boahene v The Republic [1972] 1 GLR 70***
- ***Apaloo v Republic already referred to.***
- ***Gligah v Republic [2010] SCGLR 870***
- ***Dexter Johnson v The Republic [2011] SCGLR 601***
- ***Frimpong alias Iboman v Republic already referred to supra***
- ***Kamil v The Republic [2011] SCGLR 300***

The case of **Kwashie v The Republic [1971] I GLR 488**, Azu Crabbe, Anin and Archer JJA (as they were then) has for many years been used to explain the aims of punishment. But the facts of the case has been lost and the real facts behind the principle stated in Azu Crabbe J.A.'s judgment over the years have not been put in proper contest. I will therefore set out portions of the judgment I consider worthwhile to support my analysis and conclusion in this opinion as follows. See page 491 of the report,

AZU CRABBE JA

..."*This appellant was, until 14 April 1967, when the offence alleged in count two was committed, a detective constable attached to the Tema New Town Police Station. The second appellant was also, at the material time, an escort police officer at the same station. The evidence against*

the two appellants was that at 9 p.m. on 14 April 1967, they booked themselves in the station diary of the Tema New Town Police Station as going on enquiries. On leaving the police station the appellants called the third accused, also an escort police constable, to join them, and at about 11.30 p.m. they hired a taxi and asked the driver to drive them to a village about 22 miles from Afienya. Meanwhile, the fourth accused had at about 6.30 p.m. earlier in the evening hired a two ton Morris bus and had asked the driver to drive him to a village near Kpong to collect the furniture of his brother and take it to Tema. The fourth accused boarded the bus with two other men, and they set out on their journey at about 7 p.m. Just before reaching Afienya the bus was overtaken by a taxi, which stopped a few yards ahead. The first appellant alighted from the taxi and signalled the bus to stop. ***When the bus stopped the third accused came out of the taxi and boarded the bus on the instructions of the first appellant.*** *After that both the taxi and the bus continued their journey.* ***At the Afienya barrier, the bus was stopped and searched, but nothing incriminating was found in it, and the driver was allowed to proceed. When the taxi got to the barrier the first appellant told the policemen there that they were on their way for some investigations, and so the taxi was allowed to pass without any hindrance****. The taxi again overtook the bus, and at about two miles to Kpong, the first appellant asked the driver to stop by the road-side. Soon the bus also arrived at the spot, and the fourth accused asked the driver of the bus to park behind the taxi. The two appellants [p.492] and the third and fourth accused persons got out of their vehicles and walked to the house of one Peter Senancoo Ankuma. It was about midnight, and Ankuma had gone to bed. He was aroused from his sleep and was told that he had in his possession some contraband goods.* ***The first appellant produced from his pocket and showed to him a piece of paper which he alleged was a search-warrant. The rooms of the house were thoroughly searched, and the appellants and their confederates carried away with them the goods enumerated in count two of the indictment, and deposited them in the bus. The appellants arrested Ankuma and put him into their taxi and asked him to take them to the person who had brought the goods to his house. The taxi driver drove towards the direction of Tema, and on the way the appellants told Ankuma that they were taking him to the Dodowa Police Station. But after the taxi had travelled a distance of about one mile it stopped, and the appellants asked Ankuma to go down and look for the owner of the goods. Meanwhile, the bus was heading***

towards Tema, and as it approached the Afienya barrier it was overtaken by the taxi, and the driver was signalled to stop. It stopped, and the taxi also stopped in front of it. The second appellant got out of the taxi and had a quiet conversation with the third accused, who was sitting in the bus. After this the taxi moved, and the third accused asked the driver of the bus to follow the taxi. At the Afienya barrier the taxi was stopped by the police, and whilst the police pretended to be inspecting it, the bus passed without stopping.

The third accused instructed the driver of the bus not to stop for inspection. On the way the taxi again overtook the bus and drove straight to Tema and parked at Community No. 1. Later the bus also arrived at Community No. 1, and the fourth accused instructed the driver of the bus to drive to Kokompe in Accra and to unload the goods at his house. At about 3.30 a.m. on 15 April 1967, the orderly on duty at the Tema New Town Police Station saw the appellants return together to the station. The first appellant was in mufti, and the second appellant was dressed in police uniform. The driver of the bus carried out the instruction which he received from the fourth accused, and subsequently, during the investigation by the police into this case, one case only of tobacco was discovered in the house of the fourth accused during a search. The rest of the goods have not been recovered.

The arguments put forward by Mr. Agadzi in support of the appeal against sentence may be summarised as follows: (1) that the trial judge gave no reasons for the severe sentence that he passed on the first appellant; (2) that having regard to the value of the goods stolen the sentence is excessive; (3) that the first appellant had no record of any previous convictions and since he is a first offender he ought to have been more leniently dealt with; and (4) that the mere fact that the first appellant was a police officer was not by itself a good enough reason for imposing an unusually harsh sentence.

Dealing with the first submission, we would state that there is no obligation on a trial judge to give reasons, when imposing sentence on a convicted person. We will take the second and third submissions together…

In determining the length of sentence, the factors which the trial judge is entitled to consider are: (1) the intrinsic seriousness of the offence; (2) the degree of revulsion felt by law-abiding citizens of the society for the particular crime; (3) the premeditation with which the criminal plan was executed; (4)

the prevalence of the crime within the particular locality where the offence took place, or in the country generally; (5) the sudden increase in the incidence of the particular crime; and (6) mitigating or aggravating circumstances such as extreme youth, good character and the violent manner in which the offence was committed. These are factors not directly connected with the offence. In R. v. Blake [1962] 2 Q.B. 377, C.C.A. the court dismissed an appeal against a maximum sentence of fourteen years' imprisonment, and in delivering the judgment of the court, Hilbery J. said at p. 381: "It has been said, rightly, that in passing sentence a judge has to consider the offence and the offender, but he has also to consider the interest of society." A sentence must be intended to serve a purpose, and as Hilbery J. said in the Blake case at p. 383: "This sentence [of 42 years' imprisonment for spying] had a threefold purpose. It was intended to be punitive, it was designed and calculated to deter others, and it was meant to be a safeguard to this country."

The Court of Appeal, per Azu-Crabbe J. A, then proceeded to give reasons why the appeal against sentence by the appellants, two serving police officers should be dismissed and in the process laid down what is generally considered as the locus classicus on aims/objects of punishment in sentencing. The Court then continued as follows:-

"The first appellant was a police officer trained in the detection of crime. In recent months there has been a sudden increase in the incidence of trafficking in contraband goods, and this has caused a great deal of public anxiety. The first appellant must have known that this offence was particularly grave, from the public point of view, because of the severe damage it does to this country's economy, which is already fragile. ***In collaboration with two other police officers, the first appellant used his office as a police detective to seize a large quantity of goods which had been smuggled into this country****. The bus carrying the goods passed through the Afienya barrier without inspection in a manner which leaves this court in no doubt that it was all prearranged. The goods were not sent to the Tema Police Station, but to the private house of one of the accomplices in Accra for the purpose of selling them* ***for the joint benefit (at page 494) of all who participated in this criminal adventure. Apart from one case of tobacco, none of the other goods have been recovered."***

I may at this juncture venture to state that this was definitely an earlier attempt by the first appellant therein in collaboration with the others mentioned therein, to create, loot and share their booty. The Court of Appeal continued by indicating their revulsion against this criminal conduct.

> *"We cannot but remark that there have been persistent rumours in this country that some police officers are in collusion with smugglers of contra-band goods from neighbouring countries and elsewhere.*
> *Upon these facts, which reveal an offence of a very grave nature, the sentence must not only be punitive, but it must also be a deterrent or exemplary. The sentence must mark the disapproval of our society of such conduct by police officers.* ***Where the court decides to impose a deterrent sentence, the value of the subject-matter of the charge, and the good record of the accused become irrelevant.*** *Thus, in* ***R. v. Goldsmith and Oakey [1964] Crim.L.R. 729, C.A.*** *where two police officers appealed against their sentences of four years' imprisonment each for conspiracy to pervert the course of justice, the court said: "When however one is giving deterrent sentences, and this was a deterrent sentence, it does not seem to the Court that it is proper to take into consideration the individual circumstances, whether it be record or of service."* ***(See D. A. Thomas, Sentencing-The Basic Principles [1967] Crim.L.R. 503 at p. 512.) In a footnote to the Goldsmith case D. A. Thomas said in [1967] Crim.L.R. 503 at p. 512:***
> *"For a further illustration, see* ***Rata***, ***Lane*** *and* ***Comer***, *March 20,1967, where three men in their thirties appealed against sentences of eight years' imprisonment for armed robbery: the court referred to the principle laid down in* ***Curbishley*** *and others, supra, that 'in this type of case* ***where deterrent sentences are being considered there is no real ground for distinction between individual accused on the grounds of age, record or their private domestic circumstances."***
> *We wish to refer briefly to a few other cases to show the attitude of an appellate court where a deterrent sentence is passed at the trial. In* ***R. v. Rhodes [1959] Crim.L.R. 138, C.C.A. the court upheld a sentence of t****welve months' imprisonment. The prisoner, a man of 46 years of age, had pleaded guilty to a charge of forgery. The offence was committed when the prisoner, who was the occupier of a council house, forged a certificate of wages in order to qualify for a rebate of rent based upon his earnings. The prisoner was previously of good character. The appeal court declined to interfere with the sentence, because it was clear that the recorder had been minded deliberately to make an example of the prisoner and of two other men in similar cases.*

In ***R. v. Machin [1961] Crim.L.R****. 844, C.C.A. the appeal court upheld a sentence of six years' imprisonment for rape. It was reported that:*

"Lord Parker C.J., *giving judgment, said that the appellant was a young man of 21 years of age with virtually a clear record. However,* ***single women must be protected against disgraceful assaults of this kind, which were all too prevalent in this country today.*** *"See page 495.*

In R. v. Smith (No. 5) [1963] *Crim.L.R. 526, C.C.A. the appellant, employed as checker at a railway goods depot, pleaded guilty to two counts of receiving goods worth £24 that had been stolen in transit. He had no previous convictions, and had had 41 years service on railways.*

He also had a good army record. ***In the view of the appeal court since the appellant was in a position of trust and the theft of goods in transit was prevalent, it therefore found nothing wrong in principle with the sentence of fifteen months' imprisonment****.*

In ***R. v. Gosling [1964]*** *Crim.L.R. 483, C.C.A. the appellant, aged 35, was a market porter who had stolen property worth* ***£10*** *from a market trader. He had no previous convictions, and was therefore a first offender. The appeal court, nevertheless,* ***held that a deterrent sentence of twelve months' imprisonment was proper despite his previous good character. We think that the argument in this case that the sentence of seven years' imprisonment with hard labour should be reduced on account of the first appellant's previous clean record must fail.***

The final argument which Mr. Agadzi addressed to us was that the position of the first appellant ought not to have influenced the trial judge to pass a severe sentence. This is an ordinary case he said, and an ordinary sentence below seven years' imprisonment would have been adequate.

We cannot accede to this argument. ***In determining a sentence it is proper for the court to consider, on the one hand, the social or official position of the offender, and on the other, that the offence may be aggravated by reason of such position. In R. v. Cargill (1913) 8 Cr.App.R. 224, C.C.A. at p. 231, Channell J****., in dismissing an appeal against sentence, said as follows:*

"An appeal has been made to us because of the serious consequences which a conviction has to a man in this position. Punishment is sometimes imposed for the sake of others. This case revealed a very unfortunate state of things at Hull; the place was infested with a plague of very juvenile prostitutes*. That being so, and a clear case found of a man assisting in that state of things, and breaking the law, it was necessary to inflict a substantial punishment. In*

addition to this it is very desirable, if possible, to pass a sentence on a man in a good position exactly the same as on a man in a different position; it is true the sentence is harder, but the offence is correspondingly greater; the man ought to know better, and the way of meeting that is to give exactly the same sentence; the sentence is worse, but, by reason of the prisoner's position, the offence is worse. Even if the Court thought it would have only imposed a sentence of six months', instead of nine months, imprisonment, it does not interfere with sentences on that ground alone."

In R. v. McConnach [1966] Crim.L.R. 291, C.C.A*. the appellant, aged 55 years, was a chief constable of police. He was convicted on eight counts of causing money, and one of causing a valuable security, to be delivered by false pretences, and eight counts of fraudulent misapplication of money. [p.496] The money was part of a special expenses fund under his control, which it was alleged he used for his own purposes. The amount involved was about £160.* ***The appellant had a fine record and had lost a great deal by his conviction, including, probably, pension rights with a capital value of 25,000.***

In the opinion of the appeal court, high responsibilities carry high duties, and any public servant convicted of dishonesty in the course of his duty was almost invariably sent to prison. *This being a case for prison the appeal court did not think the sentence passed at the trial could be said to be excessive.*

The first appellant in this case used his position as a police officer to collect all the goods enumerated in count two. These were to his knowledge contraband goods, and his duty as a police officer was to arrest the offender and seize the goods. By sending the goods to a place, other than the police station, to be sold for his private benefit, the first appellant must have been aware of the seriousness of the crime he was committing. In our opinion, the learned trial judge would be justified in taking the official position of the first appellant into consideration in passing an exemplary sentence.

This court has taken note that of all the goods enumerated in count two only one case of tobacco has been recovered, and there is no question of restitution. ***The rest of the booty will be at the disposal of the first appellant and his accomplices to enjoy on their release from prison. It is necessary in these circumstances that a deterrent sentence must be passed so as to deprive the first appellant and his accomplices of the fruits of their criminal venture for a long time.***

To the first appellant we would re-echo the words that Edmund Davies J. used when sentencing Wilson, one of the main participants in "The Great Train Robbery" in R. v. Wilson, The Times, 18 April 1964: "It would be an affront if you were to be at liberty in the near future to enjoy these ill-gotten gains. [We] propose to ensure that such an opportunity will be denied you for a very long time."
Finally, we would say that although the sentence appealed from may appear severe, we do not think it is excessive in view of the gravity of the offence and the necessity for an exemplary sentence. In the result we dismiss the appeal of the first appellant against his sentence of seven years' imprisonment with hard labour"

The facts and the analysis of the case **Kwashie v Republic** make very interesting reading.
What I deduce from the case is that, the age old saying that *"to whom much is given, much is expected"* has been aptly put into practice by the principles ably stated by the Court.

The fact that the appellant and two of the other three accomplices all of them policemen, no doubt influenced the appellate court in not interfering with the sentence of seven (7) years imposed by the learned trial Judge.

Professor Mensa-Bonsu in her invaluable book under reference could not have captured the reasons for the refusal of the appellate court in the Kwashie case to reduce the sentence better in the following words on page 138 of the book.

Reasons for the punishment imposed in the Kwashie case.

"Note: The punishment imposed on this corrupt policeman was thus intended to achieve general deterrence. Its aim was to warn police officers and other persons placed in like positions of official authority that the courts would take a serious view of any acts involving an abuse of the public trust. It certainly was not for the particular culprit's benefit since he was not going to remain a police officer after that conviction, for the lesson learned to be applied."

From the above, I think it is however difficult to endorse the opinion of the Court of Appeal in the **Kwashie v Republic case** that there is no obligation on the part of the Court to give reasons for the sentence imposed on a convict.

I am however of the considered view that, where a court imposed a severe or harsh sentence on a convict which is out of the ordinary it would then be desirable to give reasons for such severe or harsh sentence.

In my mind, it is imprudent to leave such issues as to why a severe deterrent or harsh sentence was passed to conjecture or guesswork.

In the **Kwashie v Republic case**, the value of the items which the appellant therein used his position to steal, (created and looted) and then shared the booty have been enumerated as follows:-

i. 8 cases of tobacco

ii. 4 cases of matches

iii. 4 cases and 9 cartons of Rothman's King size cigarettes all to the total of N¢3,171.00

this amount as at 15th April, 1967 when the offence was committed was a very huge amount by all standards.

WHAT THEN IS THE WAY FORWARD?

In what significant respects will such principles that have so eloquently and in great detail been discussed in the **Kwashie v Republic** case have an effect on the appeal against sentence in this appeal?

Again I would like to conclude my reliance on Prof. Mensa-Bonsu's Invaluable Book under reference with the following quotation at page 139 on whether deterrence and lengthy prison sentences have been effective.

> *"Reform and rehabilitation*
>
> *Adherents of the utilitarian theories also believe that with punishment should come the possibility of first showing the individual the error in his or her ways and bringing about a positive change in the life of such individual so that a criminal lifestyle would be forsworn in favour of a more decent one. Such changeover also requires rehabilitating the individual. The concept of rehabilitation involves providing assistance to enable an offender to adopt a life style which is different from the old unproductive*

and criminal one. This need to rehabilitate is premised upon the fact that whatever efforts at reform are made would come to nought if the reasons for the adoption of a criminal life style are not tackled. Efforts are thus made to fill the period of incarceration with work schedules so as to invest the offenders with employable skills. Thus, during periods of imprisonment, there is the insistence on the learning of trades, etc so that people who took up a life of crime because they had nothing to do could be helped to lead an honest life. This would in turn improve the number of law-abiding citizens and conversely decrease the number of criminal elements."

Have severe, harsh, deterrent and long prison sentences been successful in reducing the crimes in respect of which the minimum sentences have been raised to higher levels and thereby prevent other like minded persons from committing such crimes? I do not think so. One only has to read daily newspapers and observe that, defilement, robbery and narcotics cases are common. What this means is that, stiff, severe, harsh and long prison sentences by themselves, have not succeeded in reducing the prevalence of crime in the society.
As a country, there is the urgent need for a very matured and holistic revision of our criminal justice regime. This should undoubtedly include the various punishment regimes and legislations. Otherwise, in the near future, the prisons will all be full of young and able bodied men and women all wasting their productive life in prison. This will be disastrous for the country.

I will now proceed to discuss in some measure the reasons why the appeal herein against the sentence of 30 years should succeed.

WEAPON USED IN ROBBERY

What was the weapon used in this case? From the evidence on record, the victim P.W.I stated in her evidence in chief that it was one of the accused persons wearing a black "T" shirt who held her bag, pulled it from behind and in the course of pulling it, she fell down on some cement blocks and when she got up, she realised that her palm had been slashed and the bag taken away from her.

During cross-examination, PWI confirmed that she did not know any of the accused persons including the appellant.

Indeed, but for the evidence of PW4, the Police Investigative officer during cross-examination by the appellant when he stated thus:

Q. "Where did you get the pistol and cutlass and ID cards from?

A. The cutlass was found on you. Pistol found on 2nd accused. The purse with ID card found on 1st accused with blade."

there would have been no nexus between the appellant and the weapons used.

But for the above piece of evidence and the confession statement of the appellant, there would have been absolutely no evidence connecting and or linking the appellant to any weapon.

However, despite the fact that a cutlass was found on the appellant, there is no corresponding evidence that the injury or harm caused the victim was caused by the appellant using a cutlass.

The other weapons found on the other accused persons were the pistol and blades. There is also no evidence that the pistol was used, or was even loaded with ammunition and functional for that purpose. The medical report on the victim P.W.I reads as follows:

"Laceration of the left palm, wide laceration, superficial, measuring about 5 cm & 10 cm."

The above injuries can be consistent with a fall on the cement blocks, use of a razor blade or cutlass.

Under the circumstances where another accused person was found to be in possession of a razor blade, it will be travesty of justice to conclude that it was the appellant who caused the injuries because a cutlass was found on him. **It is even therefore very doubtful to conclude that the appellant used any offensive weapon on the victim in this case.**

VALUE OF ITEMS STOLEN

The value of the items stolen is not difficult to assess. This can be taken from the particulars of the offence in count two, and these are:

i. Handbag containing GH¢875.00

ii. Nokia mobile phone – no value given

ii. Student and Voter I. D. cards

iii. The Handbag itself

This is an offence which was committed in 2006. Assuming that the total value of all the items is to the total value of GH¢3,000.00. This will even be a very conservative valuation.

NATURE OF HARM CAUSED TO VICTIM

I have already stated the nature of the injury caused the victim during the incident. But it has to be noted that, this cannot be traced or linked to the appellant.

AGE OF APPELLANT

It is not in dispute that the appellant at all times material to the robbery incident, was aged 20 years. Seeing him in court on some occasions has confirmed this age. As at now, the appellant's age should be 28 years.

APPELLANT IS A FIRST OFFENDER

There is also no doubt that the appellant is a first offender. There is no indication by the prosecution as to whether the appellant is known or not. If the prosecution with all the state machinery and resources at their disposal have not found out that the appellant is not a first offender, then so be it. The fact then is that, the appellant is a first offender.

If I juxtapose the above criteria or indicators to the facts of the **Kwashie v Republic case**, which has almost become the locus classicus on punishment and the most recent one in the unreported case No. ACC7/2012 ***The Republic v Nana Ama Agyeiwaa & 2 Others*** where a High Court in Accra on 9/5/2014 sentenced the accused persons therein to 15 years then it would appear quite conclusively that the appellant has found himself in a situation where as a fly, a bulldozer has been used to kill him by the sentence to which he has been sentenced to.

In the recent case, dubbed the Spintex Road robbery, the value of the items stolen were:

i. GH¢75,000.00

ii. $320,000USD

iii. €111,000 Euros

The weapons used therein were a **knife**, a **pistol** and a **rope**. In the ***Kwashie v Republic case***, three out of the four accused persons were policemen who used their rifles to intimidate and steal from the victim as well as used their positions of authority and influence to facilitate the crimes therein.

The total value of the items which had been stated elsewhere in this opinion is N¢3,171.00 which by 1967 by all standards was very substantial. In that case the appellant was sentenced to 7 years imprisonment.

From the above few examples, it appears quite clear that the sentence imposed on the appellant in this case is out of proportion to the value of the items stolen, the nature of the weapons used and the injuries or harm caused the victim.

From the many references I have made to the Invaluable book of Prof. Henrietta Mensa-Bonsu, *The Criminal Law Series*, the decision of the Court of Appeal in the **Kwashie v Republic case** and all the other cases referred to therein, and finally to the submissions of learned Counsel for the Republic/Respondent and the Appellant, it will be desirable, infact a necessity to discuss the sentencing principles which operated in this appeal and that which is to be desired.

a. Punitive Nature of Sentence

There is no doubt that the sentence of 70 years which was originally imposed by the trial court on the appellant was punitive to the extreme. Even though the Court of Appeal exercised their discretion properly by reducing it to 30 years, it still falls short of the desired standard.

Sentences must always be proportional to the value of the items stolen especially in cases of robbery and stealing and the violence committed during the robbery. Also associated with this are the premeditated nature of the crime and related matters.

As was stated earlier, but for the confession of the appellant, the conviction itself could not have been sustained. I will therefore conclude that the punitive nature of the sentence in this case is too excessive and that, as the final appellate court, reasonable and considerate standards should be set from which lower courts should draw guidance, otherwise, the courts will be dysfunctional in our bid to administer criminal justice.

b. Deterrence

From the detailed analysis that has already been made in respect of principles and decided cases on the scope, aims and purposes of punishment, it is apparent that the severe and harsh prison sentences that have become the norm rather than the exception in some of the decisions of the courts, has not succeeded in serving as deterrence to others.

This is evident in the increase in serious crimes. This therefore means that, our punishment regime is not only obsolete, but archaic and needs to be revolutionized, otherwise, we are sitting on a time bomb.

Reform and rehabilitation of convicts and of the prison system has to be undertaken as a matter of urgency.

c. Reformative

This naturally dovetails into what was discussed supra. How do we reform our criminal justice administration in respect of sentencing?

As was stated elsewhere in this write up there has been little or no substantial amendments to section 294 of Act 30. I have in my short career on the bench consistently advocated for major reforms in our sentencing regime and the strengthening of the Social Welfare Department i.e. Probation Officers. This lies in my views that minimum and mandatory prison sentences of say 10 or 15 years for robbery or robbery with violence need not be served in full in some appropriate cases.

This should come about when the courts, which alone have the constitutional responsibility of imprisoning convicted persons will have a change of heart and commit some part of the imposed sentence to suspended sentences. See article 123 (3) of the Constitution 1992, which vest judicial power in the Judiciary.

This in my opinion must be subject to good behavior report given by the prison authorities on the convict whilst in prison. Thereafter, any beneficiary of a suspended sentence must also be monitored and evaluated by probation officers of the Social Welfare Department for some time.

In this case for example, despite the absence of any legislative reforms to that effect, it should be possible, taking into account mitigating factors like the age of the appellant, value of items stolen etc. to sentence the appellant to 15 years I.H.L, with five years suspended subject to good behavior of the convict in prison. This will necessarily involve a complete overhaul and strengthening of the capacity of the Social Welfare Department to enable them carry out this task of monitoring and evaluation of convicts serving suspended sentence, or on Parole or ordered to do community service. But since this matter, was not argued for my brothers and sisters to comment on it, I will restrict myself to the current practice and impose the barest minimum of 15 years I.H.L with a heavy heart.

d. To Appease Society

By far, the most inconsistent indicator of sentencing policies is this issue of appeasing society by the imposition of deterrent sentences because society is presumed to frown upon criminal conduct. My experience and observation has revealed that society has been very selective in the type of revulsion it exhibits towards various criminal conduct.

For example, it is certain that anybody who attempts to steal even a tin of sardine or tomato paste from say the Makola, Malam Atta, or Salaga markets is sure to be lynched to death upon the appellation of *"Dzulor eh dzulo eh".*

The lesson to be gathered from the said observation is that, the Ghanaian society generally frowns upon any theft of physical items.

There is a publication in the Daily Graphic of Saturday, 24th May 2014 at page 13. This is a story of goat thieves who had been lynched at Wa. The story reads as follows:

> *2 Goat Thiefs Lynched*
>
> "*Two persons suspected to have stolen a goat were lynched by an angry mob in Wa last Thursday after they had failed to escape from their attackers.*

The two, who had given their names to the police as Ibrahim Tahiru and Pascal, sustained severe body injuries, and died later at the Wa Regional Hospital.
According to the police, the two died within 30 minutes of each other following their admission to the hospital.

A motorbike alleged to have been used by the suspected thieves was set ablaze by the mob. An eyewitness said the men were chased from the St Francis Xavier Seminary at Nakore when information broke that they had allegedly stolen some goats from the neighbourhood.The eyewitness said the two fled on their motorbike but were pursued and brought down by a pick-up truck as they headed towards central Wa.

A staff officer of the regional police command, Assistant Superintendent of Police Edward Nyamekye, said a police patrol team was alerted by some residents to the ongoing mob action.
He said the team rushed to the scene and rescued the pair from the hands of the mob, most of whom were armed with ***machetes****,* ***stones*** *and* ***sticks****.*

They were then rushed to the hospital for medical treatment but died even as medical officers fought to save their lives."

Is this the type of conduct that as a people we should encourage? This is not only archaic, but is cruel and barbaric. But that is how society reacts to theft cases even in far away Wa, which I understand is a very peaceful city. This practice of instant justice must be deprecated in all its forms.

On the other hand, I have observed that, people who use their ingenuity, positions of influence and connections to either steal millions of Ghana Cedis or amass wealth and lead lifestyles which their known and declared incomes cannot support are heroes and opinion leaders in their communities.

Such persons are likely to occupy the front pews in their churches and can even be decorated as traditional leaders because of their services within the communities which they come from. As a society, we have become so much deeply rooted in materialism that we have lost sense of any values.

I have not, within the period I have been matured enough, observe any societal attack against any of the following criminal conduct and or revulsion of societies.

i. known or suspected narcotics dealers;

ii. Known or suspected dealers in contraband goods;

iii. Known or suspected persons who use their brains to steal and amass state resources to the detriment of the state, etc.

There is another story in the Daily Graphic of Monday 19th May, 2014 page 81, about a suspect who has been arrested on narcotics offence.

> *"A 22-year old labourer has been arrested for allegedly possessing 1,340 wraps of dried leaves suspected to be cannabis.The Police gave the name of the suspect as Alhaji Musah from Sandema in the Upper East Region but residing at Nmai-Dzorn in Accra.*

Security Guards

> *The Accra Regional Police Commander, Deputy Commissioner of Police (DCOP) Mr. Christian Tetteh Yohonu, briefing journalist last Saturday, said the police received information on the cannabis from two security guards of the University of Ghana Farms. He said the security guards hinted the police about a man with a bag containing cannabis on the farms about 6:35p.m on 12th May 2014.*
>
> *"The police proceeded to the farms found the suspect with a bag containing 1,340 wraps of dried leaves believed to be a narcotic drug and arrested him he said*."

Accomplice

> *When the police arrested the suspect, Mr. Yohonu said, he told the police he was a labourer who worked on the University Farms for a man he identified only as Kofi.*
>
> *"He also told the Police that the said Kofi had given him the bag which he (Kofi) claimed contained his personal belongings and instructed the suspect to carry it to the roadside for him (kofi)," Mr Yohonu said. "*

However, the Regional Police Commander said, the suspect "could not lead the police to the said Kofi" and also failed to provide further details of his supposed accomplice.

He said the police would put the suspect before court, while the dried leaves would be sent to the crime laboratory for scientific analysis to confirm the suspicion of the police or otherwise."

In this latter case, the suspect was not attacked or visited with any physical assault. Even though this is commendable and shows respect for his human rights, it also depicts how society reacts to different types of crimes.

I can confidently state without any contradiction that apart from stealing/robbery and possibly murder and some careless driving offences where fatality results, other suspected criminal activities are not frowned upon by the society as is expected.

In order to determine what levels of punishment to impose on persons who engage in criminal activities, it is necessary to come out with objective criteria by which this is to be measured. This is because indicators provided by society are inconsistent, and cannot be a useful guide.

It is therefore very important to note that the instant reaction of society to this or that type of criminal conduct may not be a correct yardstick to use in determining the correct levels of sentence. This is because, as I have pointed out, the views of society may sometimes be warped and not an acceptable, reasonable and objective basis upon which convicts are to be sentenced.

e. Protect the Community

This criteria is not only flawed but it is also one which may end up filling all the available prison facilities by convicts. This is because, despite the severe and harsh sentences that are being imposed on say robbery/stealing, rape/defilement, and narcotics related crimes, the prevalence of these crimes continue to plague us with no end in sight. It is therefore clear that, the solution in fighting crime does not lie in confining the convicted persons to long prison terms.

In my opinion, the solution rather lies in ensuring that persons convicted of societal related crimes like stealing/robbery, rape/defilement, narcotics,

defrauding by false pretences etc. are made to feel the humiliation and shame that these crimes attract.

Society, especially the area or community from which the convict comes from must be made aware of the consequences that follow criminal and deviant behaviour. This in turn will also deter like minded people if they observe the shame, ridicule and futility of engaging in criminal conduct.

As a young boy, I had a feeling of melancholy at the sight of convicts marching down from their fortress at the Kpando Todzi prisons to their farms which lies at the extreme end of the town.

This no doubt had a humbling effect on me since some supposedly wealthy and influential persons in the community who found themselves in the prisons for criminal conduct were often seen marching with the other convicts doing communal work in people's farms or homes or working on the prison farms.

My recollection is also that such persons normally returned from prison well reformed and humbled. Even though there were some deviants who subsequently became jail birds, majority of those who served prison terms within their communities changed their lives.

It is in this respect that I commend the publication of the pictures of ***Nana Ama Agyeiwaa and Avo Kevorkion*** on page 3 of the Daily Graphic of Saturday 17th May 2014 alongside their story of having been jailed 15 years each for robbery under the caption, *"Fitness Instructor, Lebanese Jailed 30 years*".

It will be recalled that in my dissenting opinion in the unreported case of **Ignatius Howe v The Republic**, *Suit No. J3/3/2014* dated 22nd May, 2014 mentioned publicity as one of the effective ways of imposing a deterrent sentence.

In that minority opinion, I stated, whilst quoting Prof. Mensa-Bonsu as follows:

> *"Without publicity, the public would not know about the fate of offenders and therefore the information which would encourage law abiding behaviour would be unavailable."*

I would therefore advocate that the state apparatus embark upon vigorous publicity about convicted persons of criminal conduct such as robbery, rape, defilement, narcotics and other cases in which the society needs to know because it has effect on society. It is my conviction that this practice of publicity would create as much shame and ridicule that both the convicts and the public would be deterred from any such future conduct.

CONCLUSION

Having considered the above principles in the light of the facts and circumstances of the instant appeal, it is not only clear and apparent that the sentence of 30 years imposed on the appellant by the Court of Appeal is still inordinately harsh, excessive and therefore ought to be set aside and reduced.

I will therefore on the authority of the decision of the Court of Appeal in the case of Apaloo v Republic, already referred to supra, reduce the 30 years to 15 years imprisonment with hard labour.

It was indeed stated in the **Apaloo v Republic case** that grave offences such as in the case therein *(where the first appellant was convicted of 5 counts of various offences under the Currency Act, 1964 (Act 342) including possession of implements for making notes contrary to section 19 (a) of Act 242 and abetment of forgery contrary to section 32 of the Act)* usually called for deterrent sentences. The Court stated the principle as follows:-

> "*But the general principle is that a sentence of imprisonment; even though intended specifically as a general deterrence,* ***must not be excessive in relation to the facts of the offence****. This court thinks after a most anxious consideration of the age of the first appellant and all the circumstances of this case, that the sentence of fifteen years on each of counts (1) (4) and (5) are inordinately excessive and ought to be reduced and accordingly a sentence of ten years imprisonment with hard labour on each of those counts is accordingly substituted to run from the date of the original sentences. To that extent the appeal by the first appellant against sentence is allowed."*

The above constitutes good authority and basis for the further reduction of the appellant's prison term from 30 to 15 years I.H.L. From my encounter in Korle bu on 14th May 2014, I think the time has come for Judges to be very cautions in the imposition of custodial sentences on convicts. Personal views and

idiosyncrasies of the Judges should not play any part save the principles discussed in this judgment.

When this is done, I believe the public will to some extent understand the sentences that are imposed.

(SGD) J. V. M. DOTSE
JUSTICE OF THE SUPREME COURT

AKAMBA, JSC

In this appeal against sentence it is instructive to recount that the trial High Court imposed a sentence of seventy (70) years on the appellant. This was reduced on appeal to thirty (30) years by the Court of Appeal. The appellant prays for a further reduction of his sentence by this court because it is harsh and excessive.

The majority have dismissed this further appeal against sentence thus affirming the thirty years imposed by the Court of Appeal. I am unable to subscribe to the reasoning of my respected brothers and sisters on that issue. We stated in the case of **Ignatius Howe v The Republic CRA J3/3/2013 of 22/5/2014 unreported** that in determining appropriate sentence to impose on an accused person certain crucial considerations should be factored by a court of law. This is what we stated: "In determining appropriate sentence to impose, a court of law is obliged to weigh all the aggravating factors as against whatever mitigating factors brought to the court's attention. The aggravating factors include: the amount of force used by the accused or perpetrator, the amount of injury inflicted upon the victim/s, whether or not the victim falls within a category of vulnerable persons such as old age or sickness, whether this was a planned offence, time of the offence such as night, group or gang attack, dehumanizing actions. The possible mitigating factors include: less use of force, less injury, young offender, low mental capacity, spur of the moment, daylight, and single offender."

Arguing the instant appeal, reference was made to the case of **Kwashie v The Republic (1971) 1 GLR 488-496** which held that : "In determining the length of sentence, the factors which the trial judge is entitled to consider are: (1) the intrinsic seriousness of the offence (2) the degree of revulsion felt by law-abiding citizens of the society for the particular crime; (3) the premeditation with which the criminal plan was executed; (4) the prevalence of the crime within the particular locality where the offence took place; or in the country generally; (5) the sudden increase in the incidence of the particular crime; and (6) mitigating or aggravating circumstances such as extreme youth, good character and the violent manner in which the offence was committed."

The authorities cited supra emphasize the need to weight all the factors for and against the accused appellant before determining what appropriate sentence to pass. In the present context the evidence led before the trial court does not identify the appellant as the one who snatched the PW1's bag nor that he inflicted the wound on her. Interestingly under cross examination, the PW1 said she did not know the appellant. The wound inflicted on the PW1 was not established or proved to have been a cutlass wound bearing in mind that the appellant was said to have possessed a cutlass. Without any measure of doubt it was the duty of the prosecution to establish a nexus between the weapon said to have been retrieved from the appellant and the injury if he is to be held culpable for that injury but this the prosecution failed to do. The required degree of such proof is proof beyond reasonable doubt. The next worthy consideration is the fact that the appellant is a young offender aged twenty years at the time of the offence and a first offender. It is thus after considering the aggravating factors and the mitigating factors that I find this an appropriate case to grant the appeal against sentence which I hereby do. I accordingly set aside the sentence of thirty (30) years and substitute fifteen (15) years IHL for the appellant.

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(SGD) J. B. AKAMBA
JUSTICE OF THE SUPREME COURT

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